IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 4002 of 2005(B)

PETITIONER:

MATTIL KUNJUMOIDEEN,
S/O. HASSAN HAJI, KUNNATHU HOUSE,
OORAKAM, KEEZHMURI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

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1. THE REVENUE DIVISIONAL OFFICER, TIRUR.

2. THE TAHSILDAR, TALUK OFFICE,
TIRURANGADI, MALAPPURAM DISTRICT.

BY G.P. SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER AND DEMAND NOTICE AS NO. P5-2690/02 DATED 7.3.2003

EXT.P2 TRUE COPY OF THE RECEIPT NO. 080 DATED 28.3.2003 ISSUED FROM THE OORAKAM VILLAGE OFFICE.

EXT.P3 TRUE COPY OF THE RECEIPT NO. 1346190 DATED 28.2.2004 ISSUED FROM THE OORAKAM VILLAGE OFFICE.

EXT.P4 TRUE COPY OFTHE LAY OUT PLAN OF THE BUILDING SHOWING THE TOTAL AREA OF THE BUILDING.

EXT.P5 TRUE COPY OF THE APPEAL PETITION SUBMITTED BY THE PETITIONER DATED 10.11.2004

EXT.P6 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT AS NO. 6513/04H (L.DIS.) DATED 16.11.2004

EXT.P7 TRUE COPY OF THE PLAN FOR THE COMPLETED RESIDENTIAL BUILDING IN DOOR NO. IV/433A OF OORAGAM IN R.S.NO. 134/13, WARD NO. IV OF OORAGAM PANCHAYATH.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 4002 OF 2005

Dated this the 14th day of December, 2007

JUDGMENT

The controversy in this W.P. is about the plinth area of the building. While the case of the petitioner is that plinth area is only 265.25 sq. metres, Tahsildar found the plinth area as 304.64 sq. metres. Since the difference is substantial, this Court passed an interim order on 17.8.2005 directing the petitioner to furnish a measurement report after measuring the plinth area once again. However, petitioner has produced a plan counter-signed by PWD Engineer. Of course, if the construction is strictly in accordance with the plan, then the plinth area of the building should be as shown in the plan. In any case, what the petitioner has done is not what is directed by this Court. In the circumstances, W.P. is disposed of directing the second respondent to get the actual plinth area of the building measured by the Asst. Exe. Engineer, PWD, who will measure it on request made by the second respondent after notice to the petitioner and second respondent, as if it is a direction issued to him. If the plinth area on remeasurement is

above. 278.7 sq. metres, then there will be direction to the second respondent to recover along with arrears of luxury tax an amount of Rs. 5,000/- towards cost. However, if the petitioner has no liability towards luxury tax, then second respondent shall not recover any cost from the petitioner. Second respondent is directed to get the plinth area measured and decide the matter within a period of two months from the date of receipt of a copy of this judgment. Interim orders granted by this Court will continue until then and thereafter recovery will be based on orders of the second respondent. Petitioner will produce copy of this judgment before the 2nd respondent for compliance.

(C.N. RAMACHANDRAN NAIR)
Judge